IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2)(b)
Description of case

Writ Petition No. 1150 of 2003 (M/S)

Soban Singh……. Petitioner.

Versus

Executive Engineer Garhwal
Jal Nigam and others …….. Respondents.

Date of decision: 20, of November, 2004

For the approval of:

Hon'ble Mr. Justice P.C. Pant.

- Whether the order/judgment should be sent to the reporters for reporting? (Yes)

- Whether the reporters be allowed to see the judgment? (Yes)

Reserved Judgment

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Civil Writ Petition No. 1150 of 2003 (M/S)

1. Sobhan Singh, S/o Sri Mor Singh,
R/o Village Kot Bagi, Patti Bisht,
P.O. Chunyalishort (Member of Gram Panchayat),
District Uttarkashi.
2. Finchar Lal, S/o Sri Rupsu,
R/o village Kot Bagi, Patti Bisht,
P.O. Chunyalishort (Member of Kshetra Panchayat),
District Uttarkashi.

……. Petitioners

Versus.

Executive Engineer,
Jal Nigam,
Khand Chamba,
District Tehri Garhwal & others…….. Respondents

Mr. P.C. Jhingan, learned counsel for the petitioners.
Mr. D.S. Patni, learned counsel for respondent No. 1.
Mr. N.S. Pundir, learned counsel for respondent No. 3.

Hon'ble Prafulla C. Pant, J.

By means of this petition, moved under Article 226 read with Article 227 of the Constitution of India, the petitioners have sought writ in the nature of certiorari for quashing the order dated 11.11.2003 (Annexure-8 to the writ petition) passed by the District Magistrate, Tehri Garhwal in Water Dispute Appeal No. 08 of 2003.

2) Brief facts of the case as narrated in the writ petition are that petitioner No. 1, a member of Gram Panchayat of village Kot Bagi and petitioner No. 2, a member of the Kshetra Panchayat of said village, are authorized by the Gram Sabha of

the village to file this writ petition. The petitioners earlier filed a water dispute case before the Sub Divisional Magistrate, Tehri for injunction restraining the respondents form laying water pipeline from "Bhurn Gad", alleging that if permitted, it would adversely affect the drinking water supply of the villagers of village Kot Bagi. It is further alleged that there is acute shortage of drinking water in the village and at present the villagers are getting water from said "Bhurn Gad' since 1994-95. The Sub Divisional Magistrate, Tehri initially passed the interim injunction on 13.05.2002 in the case filed by the petitioners but later-on 17.07.2003 the interim order was vacated. The petitioners preferred an appeal against the order of the Sub Divisional Magistrate under Section 11 of the Kumaun and Garhwal Water (Collection, Retention and Distribution) Act, 1975 before the District Magistrate, Tehri Garhwal which was registered as Appeal No. 08 of 2003. The said appeal was dismissed by the District Magistrate, Tehri Garhwal, aggrieved by which this petition has been filed by the petitioners on the ground that the District Magistrate wrongly accepted the inspection report of the Junior Engineer of respondent No. 1. It is further alleged that the impugned water scheme is being taken up in violation of the Government Order No. 1891/Ne-2 Pa / 2002 dated 03.08.2002 and also in violation of the letter No. 2994 / Jal Sansthan Meeting / 15 dated 29.07.2002 signed by the Chief Engineer, Jal Nigam.

3) On behalf of the respondent No. 1, a counter affidavit was filed in which it is stated that it is that duty of the answering respondent to supply water to a place where there is more scarcity of water. It is further stated that tapping of water from water source in "Bhurn Gad" is in accordance with law as the Assistant Engineer of Garhwal Jal Sansthan has given the report

with reasons that it would not affect water supply to the village of the petitioners. Defending the orders of the Sub Divisional Magistrate, Tehri and the District Magistrate, Tehri Garhwal, it is stated in the counter affidavit that the tapping of water from village Bagon is being done in accordance with the Government Order dated 03.08.2002.

4) I heard learned counsel for the parties and perused the affidavit and counter affidavit alognwith the annexures annexed thereto.

5) The short question for consideration before this Court is, whether, the impugned order passed by the District Magistrate, Tehri Garhwal suffers from any illegality and is the water supply to the village of the petitioners is substantially affected by going ahead with the Bagon Pey Jal Yojna?

6) It is very unfortunate that slowly the water sources of Uttaranchal in remote Himalayas are drying up due to ecological and other reasons. Learned Counsel for the petitioners drew my attention to the report dated 31.05.2002 of Tehsildar, Dunda, District Uttarkashi, which is Annexure-3 to the writ petition. The relevant portion of the report is being reproduced as under:

> "आपके द्वारा उपयुक्त विषयक प्रार्थना पत्र जो जिलाधिकारी महोदय उत्तरकाषी का प्रेषित सम्बोधित है के क्रम में सुचित करना है कि ग्राम कोट में पेयजल स्रोत्र सूखने में वर्ष 1995–96 में खच्चरों से पानी ढुलान करना पडा वर्ष 1999 में पेय स्रोत्र सूखने से पेयजल की गम्भीर समस्या उत्पन्न हुई थी तथा पेयजल आपूर्ति हेतु खच्चरों से पानी ढुलान किया गया था वर्ष 1999 में पेयजल ढुलान हेतु 1,55,000/– (एक लाख पचपन हजार रुपये) खच्चरों से पानी ढुलान हेतु व्यय हुए जिसका

भुगतान खच्चर मालिकों को मस्टर रोल के आधार पर किया गया।''

The above report clearly shows that there is shortage of water supply particularly during summers in village Kot (which appears to be adjoining to village Bagi and both the villages have common Gram Panchayat with the name Kot Bagi). Mr. P.C. Jhingan, learned counsel for the petitioners drew my attention also to the copy of letter dted 11.09.2002 (Annexure-4 to the writ petition) sent by Executive Engineer, Maintenance Division, Jal Sansthan, Uttarkashi to Executive Engineer, Construction Division, Jal Nigam, Tehri in which the addressee has been apprised of the fact that the new pipeline which is being laid is going to affect the drinking water scheme provided to village Kot Bagi. In said letter it is further suggested that instead of "Bhurn Gad" the tapping of water should be done from "Lunsu Gadhera' for village Bagon. It is also argued that in view of the Government Order dted 03.08.2002, which is Annexure- 9 to the writ petition, there are directions form the State Government not to tap water from sources which would affect the existing water supply schemes.

7) The impugned order dated 11.11.2003 (Annexure- 8 to the wit petition) passed by the Collector /District Magistrate, Tehri Garhwal shows that the District Magistrate, Tehri has relied on the joint inspection report showing that there is sufficient water in the source and the proposed water scheme should not be disturbed. But said report is not signed by all. Learned counsel for the respondent No. 1 argued that problem of village Bagon is much serious as against that of the petitioner's village, as such the proposed water scheme cannot be stopped. He further argued that during summer season water

was made available to the villagers of Bagon by supplying the same through containers with the help of poise. In reply to this, learned counsel of the petitioners argued that from Annexure- 3 as discussed above, during summers, drinking water was transported through ponies to their village also. In these condition, this Court feels that the District Magistrate while disposing of the appeal No. 08 of 2003 has not considered the difficulty of petitioners village, Unfortunate part of the story is that on one side of the water source there is District Uttarkashi in which petitioners village is situated and on the other side there is District Tehri where the new water supply scheme is to be implemented. Though the Collector / District Magistrate, Tehri was the Appellate Authority in view of the provisions of Kumaun and Garhwal Water (Collection, Retention and Distribution) Act, 1975 but the villagers of District Uttrkashi who were affected appear to be feeling discriminated. Considering the scarcity of water as projected before this Court for the petitioners village as well as that of the village Bagon, since the villages are situated in different Districts, this Court feels necessary to direct the Chief Engineer of the respondent Nigam who has territorial jurisdiction in both the districts, to assess the problem afresh of both the villages and in case he comes to the conclusion that the water supply of villagers of Kot Bagi is substantially affected, he may consider if feasible to have new water scheme from the source where sufficient water is available for villagers of Bgon. It is emphasize that the water is essential to save lives in both the villages.

8) In view of the above discussion, since this Court is of the view that the water scarcity problem of the petitioners village is not properly considered by the Collector / District Magistrate,

Tehri Garhwal, the impugned judgment and order dated 11.11.2003 passed in Appeal No. 08 of 2003 is liable to be quashed. Accordingly, the writ petition is allowed The impugned order dted 11.11.2003 passed by the District Magistrate in appeal No. 08 of 2003 is quashed and a mandamus is issued to the Chief Engineer of respondent Nigam to assess the drinking water problem of villagers of Kot Bagi as well as Bagon and a copy of said report be send to the District Magistrate, Tehri, within a period of three months, who shall take it into account and shall dispose of the appeal after hearing the concerned parties afresh. No order as to costs.

(Prafulla C. Pant, J.)

Dt.: 20th November, 2004
H.Negi